COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

INCOME TAX APPLICATION NO.404 OF 2001
(Old No. 152 of 1998)

Commissioner of Income Tax Meerut

..... Applicant

Versus

ONGC as agent of Western Petroleum Services,
Dehradun

..... Opposite Party

Shri S.K. Posti, learned counsel for the applicant.
Sri J.P. Joshi, learned counsel for the opp. party.

Dated: 21.11.2005

Coram: Hon'ble P.C. Verma, J.
Hon'ble J.C.S. Rawat, J.

This is an application under Section 256(2) of the Income Tax Act by the Revenue Department against the order of Income Tax Appellate Tribunal refusing refer the following question of law as framed in the application to this Court for its decision:-

> **"*Whether on facts and in the circumstances of the case, Hon'ble ITAT was justified in confirming the order of Ld. CIT (A) who set aside the assessment made by the A.O. u/s 143(3)/263?*"**

The Income Tax Appellate Tribunal (***hereinafter will be referred to as the Tribunal***) vide its order dated 26.03.1998 came to the conclusion that in their opinion, there was no referable question of law arose in the facts and circumstances of the case and accordingly the learned Tribunal declined to refer the same after relying on the judgment in Income Tax Appeal No.3405Del/88 in the case of ONGC as agent of ETPM, ITA No.3314/Del/88 in the case of ONGC as agent of M/S Schlvmberger Far East, whereby on the same facts and under the similar circumstances, the appeals of the

Revenue against orders of the learned CIT (Appeals) was dismissed. The facts of this case are identical as in ITA No.3405Del/88 and others and ITA No. No.3314/Del/88, therefore, the learned Tribunal dismissed the appeals. The application was moved by the Department of Revenue giving the statement of fact for which the reference of question was to be decided by the High Court. The learned Tribunal while deciding the appeal held that since the order passed by the Commissioner under Section 263 of the Income Tax Act on which re-assessement order was passed, stands cancelled, hence the order passed by the Assessing Authority in pursuance of the order passed by the Commissioner under Section 263 of the Income Tax Act cannot be sustained.

Learned counsel for the Revenue Department Sri S.K. Posti contended that the orders relied upon by the learned Tribunal have not been accepted by the department and an application under Section 256(1) of the Income Tax Act was filed and which was allowed by the learned Tribunal and the matter is at present sub-judiced by this Court, hence the present application is liable to be allowed. We find force in the contention of learned counsel for the Revenue Department. Since, the judgment of the Tribunal is sub-judiced in reference by this Court, therefore it would be just and proper and would be in the interest of justice to allow the application and to direct the Appellate Tribunal to draw a statement of facts and refer the question of law to this Court for its decision.

Hence, the application is allowed. The learned Tribunal is directed to refer the above statement of fact and record and above question of law to this Court for its decision.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang